

TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

NOTICE IS HEREBY GIVEN

The Commissioner of Corporations ("Commissioner") proposes to adopt regulations under the Escrow Law relating to the prohibition of certain fees by an independent escrow agent licensed under the Law.

PUBLIC COMMENTS

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Corporations, addressed to Kathy Womack, Office of Policy, Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814-4052, no later than 5:00 p.m., Monday, April 30, 2001. Written comments may also be sent to Kathy Womack (1) via electronic mail at regulations@corp.ca.gov or (2) via fax (916) 322-5875.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 17420 of the Financial Code prohibits the payment of certain fees by an independent escrow agent licensed under the Escrow Law. This section prohibits the payment of fees and other forms of compensation for referring, soliciting, handling, or servicing escrow customers and accounts. The public policy behind the prohibition is to prevent conflicts of interests for an escrow agent, who is a fiduciary under the Escrow Law and is to act as a neutral, third party in accordance with the escrow instructions entered into by the parties to the transaction.

In 1999, the Escrow Law was amended (Chapters 253 and 441, Statutes 1999) to provide for the licensing and regulation of "Internet escrow agents" as defined by Financial Code Section 17004.5. Under business plans in use at the time of 1999 legislation, Internet escrow agents routinely pay a fee to the owner of a web site (e.g., eBay.com) for a "click-through" option on the web site. This option allows the public, directly, and without having to separately type-in the web site address of the Internet escrow agent, to access the services of the Internet escrow agent for a particular transaction. The fee paid by the Internet escrow agent for this option may violate the prohibition on "referral fees" under Section 17420.

In order to acknowledge existing market practices, Rule 1712 is proposed in order to eliminate the prohibition on "referral fees" set forth in Section 17420 in the narrow case of an Internet escrow agent engaged in Internet escrow transactions involving personal property exclusively on the Internet. The proposed rule, then, reflects the market practices involving personal property Internet escrow transactions. The proposed rule also preserves the customers' existing option of not choosing to effect the personal property transaction through an Internet escrow agent by requiring an affirmative act to "click-on" the web site's hypertext link to access the services of the Internet escrow agent.

AUTHORITY

Section 17400 Financial Code.

REFERENCE

Section 17420 Financial Code.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation. A request for a copy of any modified regulation should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulations for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document OP 02/01-B. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document OP 02/01-C. These documents are also available at the Department's website www.corp.ca.gov. As required by the Administrative Procedure Act, the Office of Policy maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Corporations, Office of Policy, 1515 K Street, Suite 200, Sacramento, California.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

- Cost or Savings to any State Agency: None.
- Direct or Indirect Costs or Savings in Federal Funding to the State: None.
- Other nondiscretionary cost or savings are imposed on local agencies: None.

DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Does not have an effect on housing costs.
- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Does not impose a mandate on any local agency or school district or a mandate that is required to be reimbursed pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within the State of California; (3) the expansion of businesses currently doing business within the State of California.
- Cost impacts on representative private person or business: The Department of Corporations is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests for copies of the text of the proposed regulations, may be directed to Kathy Womack at (916) 322-3553. The backup contact person is Karen Fong. (916) 322-3553. Inquiries regarding the substance of the proposed regulation may be directed to William Kenefick, Acting Chief Deputy Commissioner. Department of Corporations, 1515 K Street, Suite 200, Sacramento, California 95814. (916) 322-3553

Dated: March 5, 2001
Sacramento, California

WILLIAM KENEFICK
Acting Chief Deputy Commissioner